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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,443	12/21/2001	L. John Teuscher	BAL-108 (17451)	4830

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EXAMINER

BOCHNA, DAVID

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,443

Applicant(s)

TEUSCHER ET AL.

Examiner

David E. Bochna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Arguments

1. In view of the Appeal filed on 10/20/04, PROSECUTION IS HEREBY REOPENED.

New rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Information Disclosure Statement

2. The information disclosure statement filed 7/22/04 and 12/15/04 fail to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the 7/22/04 IDS fails to disclose which written opinion is being referred and the 12/15/04 IDS fails to individually list each piece of prior art that was cited in the international search report. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 8-9, 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Webb et al.

In regard to claims 1 and 9 Webb et al. discloses a connector comprising:

A body 31 having a first end 33 defining a single opening and a second end 35 defining a single opening, the body having a passage disposed therethrough from the first end to the second end to allow for transport of fluids and object through the body, the passage changing direction at a single constant angle 43 of approximately 120 degrees (Webb et al. discloses an angle of 135 degrees which is approximately 120 degrees. It is unclear what angles are encompassed by the word “approximately”, but the Examiner is interpreting the recitation “approximately” to cover a 135 degree angle because the specification states that the angle could be anywhere between 100 and 150 degrees (see page 7, lines 19-20)) between the first end 33 and the second end 35,

wherein the first end includes a coupling (flange 33) configured to rotatably engage a first member 15 of the respiratory assembly, wherein the second end includes a coupling (flange of 35) configured to rotatably engage a second member 45 of the respiratory assembly, wherein the only access to the passage is through the openings of the first and second ends.

In regard to claims 2, 8, 11 and 17, the first member is a tracheal tube 11 and the second member is a ventilating or humidifying tube 17.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-7, 12-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of and Palmer '203.

Webb et al. discloses providing a respiratory connector for the purpose of providing oxygen to a patient, and one that also swivels in order to reduce discomfort to the patient. However, Webb et al. does not disclose swivel with connectors as described by the applicant. Palmer teaches providing a swivel connector with first and second end couplings include hollow female bell housings 52, the first end coupling includes a first sleeve 90 within the bell housing, the entire circumference of the first sleeve is rotatable with respect to the first end so that the first sleeve remains in rotating engagement with the first end, the first sleeve sized to receipt of the first member therein such that the first end rotatably engages the first member; and

The second end coupling includes a second sleeve 90 within the bell housing, the entire circumference of the second sleeve is rotatable with respect to the second end so that the second sleeve remains in rotating engagement with the second end, the second sleeve sized for receipt of the second member therein such that the second end rotatably engages the second member, the first sleeve 90 has a first annular sealing member 63 on one end thereof for engagement with a first annular rib 62 on the first end, engagement between the first annular sealing member and the first annular rib causes deflection of the first annular sealing member to create an essentially hermetic seal between the first sleeve and the first end (see col. 6, lines 30-34); and

The second sleeve has a second annular sealing member 63 on one end thereof for engagement with a second annular rib 62 on the second end, engagement between the second

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annular sealing member and the second annular rib causes deflection of the second annular member to create an essentially hermetic seal between the second sleeve and the second end, the first and second ends each having a stepped annular ring 58; and further comprising a first and second retainer 104 disposed in the respective annular rings for retaining the first and second sleeve in engagement with the respective first and second ends, wherein the connector is made out of a transparent material so that the swivel connector can rotate to accommodate stress relief and also accommodate a wide range of patients from infants to the aged while at the same time providing a sealed connection that does not allow entry of the atmosphere and also allows fluids passing through and collecting in the connector to be visually inspected without taking apart the connection (see claim 15 of Palmer). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the connectors of Webb et al. to include the first and second coupling ends and transparent material, as taught by Palmer, so that the swivel connections of Webb et al. could be better sealed against outside air entering at the swivel points so that the coupling could both ease the discomfort of the patient and also supply a purer supply of oxygen to the patient and also allow the interior to be more easily inspected.

6. Claims 1-2, 8-9, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of Lorenzen et al.

In regard to claims 1 and 9 Webb et al. discloses a connector comprising:

A body 31 having a first end 33 defining a single opening and a second end 35 defining a single opening, the body having a passage disposed therethrough from the first end to the second end to allow for transport of fluids and object through the body, the passage changing direction at a single constant angle 43 between the first end 33 and the second end 35,

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wherein the first end includes a coupling (flange 33) configured to rotatably engage a first member 15 of the respiratory assembly, wherein the second end includes a coupling (flange of 35) configured to rotatably engage a second member 45 of the respiratory assembly, wherein the only access to the passage is through the openings of the first and second ends. Webb does not disclose that the angle is 120 degrees. However, it would have been obvious to make a respiratory connector with a 120 degree angle because the practice of making pipe connections with 120 degree angles is common and well known in the art, as demonstrated by Lorenzen et al. in fig. 1 or fig. 36.

In regard to claims 2, 8, 11 and 17, the first member is a tracheal tube 11 and the second member is a ventilating or humidifying tube 17.

7. Claims 3-7, 12-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb et al. in view of Lorenzen et al. and further in view of Palmer '203.

Webb et al. in view of Lorenzen et al. discloses providing a respiratory connector for the purpose of providing oxygen to a patient, and one that also swivels in order to reduce discomfort to the patient. However, Webb et al. does not disclose swivel with connectors as described by the applicant. Palmer teaches providing a swivel connector with first and second end couplings include hollow female bell housings 52, the first end coupling includes a first sleeve 90 within the bell housing, the entire circumference of the first sleeve is rotatable with respect to the first end so that the first sleeve remains in rotating engagement with the first end, the first sleeve sized to receipt of the first member therein such that the first end rotatably engages the first member; and

The second end coupling includes a second sleeve 90 within the bell housing, the entire circumference of the second sleeve is rotatable with respect to the second end so that the second

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sleeve remains in rotating engagement with the second end, the second sleeve sized for receipt of the second member therein such that the second end rotatably engages the second member, the first sleeve 90 has a first annular sealing member 63 on one end thereof for engagement with a first annular rib 62 on the first end, engagement between the first annular sealing member and the first annular rib causes deflection of the first annular sealing member to create an essentially hermetic seal between the first sleeve and the first end (see col. 6, lines 30-34); and

The second sleeve has a second annular sealing member 63 on one end thereof for engagement with a second annular rib 62 on the second end, engagement between the second annular sealing member and the second annular rib causes deflection of the second annular member to create an essentially hermetic seal between the second sleeve and the second end, the first and second ends each having a stepped annular ring 58; and further comprising a first and second retainer 104 disposed in the respective annular rings for retaining the first and second sleeve in engagement with the respective first and second ends,

wherein the connector is made out of a transparent material so that the swivel connector can rotate to accommodate stress relief and also accommodate a wide range of patients from infants to the aged while at the same time providing a sealed swivel connection that does not allow entry of the outside atmosphere and also allows fluids passing through and collecting in the connector to be visually inspected without taking apart the connection (see claim 15 of Palmer). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the connectors of Webb et al. to include the first and second coupling ends and transparent material, as taught by Palmer, so that the swivel connections of Webb et al. in view of Lorenzen et al. could be better sealed against outside air entering at the swivel points so that the coupling could both ease the discomfort of the patient

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and also supply a purer supply of oxygen to the patient and also allow the interior to be more easily inspected.

Response to Arguments

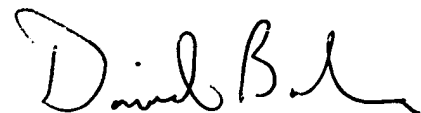
8. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



**David Bochna
Primary Examiner
Art Unit 3679
January 6, 2005**